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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,703	08/28/2001	Koji Takahashi	Q63861	4454

7590 12/29/2005
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

BAYAT, ALI

ART UNIT	PAPER NUMBER
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2627

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,703

Applicant(s)

TAKAHASHI, KOJI

Examiner

Ali Bayat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments filed 9/27/05 have been fully considered but they are not persuasive. On page 3 of Applicant's remarks, Applicant argues that although the chromaticity coordinates (x,y) of Kubo can express various color temperatures of the light source, it is not done by using the chromaticity data of gray as contended by the Examiner. Accordingly, Kubo does not disclose the use of gray color information contained in an input color image, further the black body trace A of Kubo merely describes a reference color of an object in the image, not necessarily the claimed gray color information. There is no disclosure or suggestion that the black body represents the gray color information contained in the color image.

Examiner respectfully disagrees, because the gray color information represents the number of colors in a color image and gray scale means a sequence of shades ranging from black through white, therefore the chromaticity coordinates (x, y) which means a point (or a pixel) in an image has a color information (color values) which represent the shade or color of that particular point or pixel, therefore the color temperature can be estimated by comparing the chromaticity coordinates (x, y) with the black body trace A col.14 lines 2-22.

Double Patenting

2. *A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to*

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identical subject matter. See Miller v. Eagle Mfg. Co., 151 U.S. 186 (1894); In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-14 provisionally rejected under the judicially created doctrine of double patenting over claim 1-6, 11-14, 16-19 of copending Application No. 10290335 respectively. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikenoue et al. (US 5,168,303) in view of Kubo et al. (6,545,710).

In regard to claims 1 and 9, Ikenoue provides for estimating a color temperature of a photographing light source with which the color image has been taken (col.16 lines 25-33); and correcting image signals of the color image based on the estimated color temperature (col.16 lines 30-33). Ikenoue does not provide for estimating a color temperature by using at least gray and/ or skin color information contained in an input

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color image. Kubo provides for estimating a color temperature by using at least gray and/ or skin color information contained in an input color image (col.14 lines 2-22, note by comparing the chromaticity coordinates (X, Y) with the black body trace A (which corresponds to using gray color information contained in an input color image). The prior art of Ikenoue and Kubo are combinable because they are from same field of endeavor (estimating a color temperature in an image). It would have been obvious to a person of ordinary skill in the art to incorporate the teaching of Kubo with system and method of Ikenoue, because the invention of Kubo relates to adjustment of white balance of a picked up image (col.1 lines 5-8). Therefore, it would have been obvious to combine prior art of Kubo with prior art of Ikenoue to obtain the invention as specified in claims 1 and 9.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ikenoue et al. (US 5,168,303) in view of Kubo et al. (6,545,710), further in view of Shiraiwa et al. (6,160,579).

In regard to claim 2, the prior art of Ikenoue provides for estimating a color temperature of a photographing light source with which the color image has been taken (col.16 lines 25-33); and correcting image signals of the color image based on the estimated color temperature (col.16 lines 30-33). Idenoue does not provide for estimating a color temperature by using only skin color information contained in an input color image. Shiraiwa provides for color balance of whole image can be adjusted by using an object of a given color in a given position on the screen (color of skin) colo.21 lines 38-48). The prior art of Ikenoue and Shiraiwa are combinable because they are

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from same field of endeavor (estimating a color temperature in an image). It would have been obvious to a person of ordinary skill in the art to incorporate the teaching of Shiraiwa with system and method of Ikenoue, because the invention of Shiraiwa relates to an image processing apparatus and method of adjusting the hue of an input image signal (col.1 lines 5-9).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

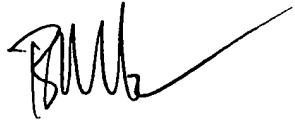
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Bayat whose telephone number is 571-272-7444. The examiner can normally be reached on M-F 9:00-5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ali Bayat *AB*
Patent Examiner
Group Art Unit 2625
12/16/05


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